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Attorneys for Secured Creditors
Tom Lange Company, Inc. and
Tom Lange Company International, Inc

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In re

SANTA CRUZ BERRY FARMING
COMPANY, LLC, a California limited
liability company,

Debtor.

Case No. 15-51771 MEH

Chapter 11

**STIPULATION NO. 3 RE CONTINUED
HEARING ON DEBTOR-IN-POSSESSION'S
MOTION FOR ORDER TO SHOW CAUSE
RE: TOM LANGE COMPANY, INC.'S
[ALLEGED] VIOLATION OF THE
AUTOMATIC STAY AND TURNOVER OF
PROPERTY OF THE BANKRUPTCY
ESTATE**

Current Hearing Date:

Date: June 23, 2015

Time: 1:00 p.m.

Place: United States Courthouse
Courtroom 3070
280 South First Street
San Jose, CA 95113-3099

Proposed Hearing Date:

Date: July 9, 2015

Time: 10:30 a.m.

Place: United States Courthouse
Courtroom 3070
280 South First Street
San Jose, CA 95113-3099

STIPULATION NO. 3 RE CONTINUING HEARING - [ALLEGED] VIOLATION OF AUTOMATIC STAY

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2 This Stipulation No. 3 re Continued Hearing on Debtor-in-Possession's Motion for an
3 Order to Show Cause re: Tom Lange Company, Inc.'s [Alleged] Violation of the Automatic
4 Stay and Turnover of Property of the Bankruptcy Estate (the "Stipulation") is entered into as of
5 June 22, 2015, by and among Santa Cruz Berry Farming Company, LLC, the debtor and debtor
6 in possession (the "Debtor") in the above-captioned bankruptcy case (the "Case"), and Tom
7 Lange Company, Inc. and Tom Lange Company International, Inc. ("TLC" and collectively with
8 the Debtor, the "Parties" and each a "Party"). In support of the Stipulation, the Parties state as
9 follows:

10 A. On May 25, 2015, the Debtor filed a voluntary petition under chapter 11
11 commencing the Case.

12 B. On Friday, May 29, 2015, the Court held a hearing on an emergency basis (the
13 "Emergency Hearing") to consider the Debtor's Emergency Motion for (I) Order Approving Use
14 of Cash Collateral (II) Granting Adequate Protection, and (III) Scheduling Final Hearing. At the
15 Emergency Hearing, the Parties discussed TLC's sales completed both pre-and post-petition.

16 C. On Monday, June 1, 2015, TLC filed a Notice of Turnover of Postpetition Cash
17 Collateral and wired the sum of \$48,397.66 to Debtor's DIP account, subject to further
18 reconciliation. That amount exceeded Debtor's estimates of post-petition sales (\$30,565.64).

19 D. Later that same day, on June 1, 2015, the Parties stipulated to a hearing on Friday,
20 June 5, 2015, to address TLC's alleged violation of the automatic stay and turnover of certain
21 pre-petition sales (the "Stay Motion"). In essence, the Stay Motion was filed as a "place holder"
22 in case the Parties could not reach a consensual resolution.

23 E. By June 2, 2015, TLC provided the Debtor with a detailed accounting to support
24 TLC's temporary freeze pending setoff. TLC contends this temporary freeze is consistent with
25 applicable law. *See, e.g.*, 11 U.S.C. § 542(b) (requiring turnover of debts to debtors "except to
26 the extent that such debt may be offset under section 553 of this title against a claim against the
27 debtor") and *Citizens Bank of Maryland v. Strumpf*, 516 U.S. 16, 20 (1995) ("It would be an odd
28 construction of § 362(a)(7) that required a creditor with a right of setoff to do immediately that

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1 which § 542(b) specifically excuses it from doing as a general matter: pay a claim to which a
2 defense of setoff applies”).

3 F. On June 2, 2015, the Parties entered into a stipulation to continue the hearing on
4 the Motion to June 12, 2015. On June 4, 2015, the Court entered its Order Approving
5 Stipulation Re Continued Hearing [Docket No. 44], pursuant to which the hearing on the Motion
6 was continued to June 12, 2015.

7 G. On June 12, 2015, the Parties entered into a stipulation to continue the hearing on
8 the Motion to June 23, 2015. On June 16, 2015, the Court entered its Order Approving
9 Stipulation Re Continued Hearing [Docket No. 50], pursuant to which the hearing on the Motion
10 was continued to June 23, 2015.

11 H. The Debtor has requested additional information and documents to further
12 analyze TLC’s setoff analysis, which TLC has agreed to provide.

13 I. On June 19, 2015, TLC commenced an on-site inspection of the Debtor’s books
14 and records, farming operations, and 2015 strawberry crop.

15 J. The Debtor has further determined that, based on recent operations, it can now
16 satisfy all immediate obligations pursuant to a revised budget (concurrently presented to the
17 Court for interim use of cash collateral).

18 K. In order to provide the Parties with additional time to analyze (and hopefully
19 resolve) the Stay Motion, the Parties agree to continue the Stay Motion to July 9, 2015, at 10:30
20 a.m., or such other date and time convenient with the Court.

21 Based upon the foregoing, the Parties agree and stipulate as follows:

22 1. The Stay Motion is continued to July 9, 2015, at 10:30 a.m., or such other date
23 and time convenient with the Court (the “Continued Hearing”).

24 2. Any response or opposition to the Stay Motion must be filed and served on or
25 before two days before the Continued Hearing at 5:00 p.m. (the “Response”).

26 3. Any reply to the Response must be filed and served on or before one day before
27 the Continued Hearing at 5:00 p.m.

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1 4. Notwithstanding this Stipulation and the consents and agreements herein, each
2 Party reserves its respective rights and remedies available under contract, at law or in equity.

3 DATED: June 22, 2015

BUCHALTER NEMER

5 By: /s/ William S. Brody

6 WILLIAM S. BRODY

JOSEPH M. WELCH

7 Attorneys for Secured Creditor

Tom Lange Company, Inc. and

8 Tom Lange Company International, Inc.

9
10
11 DATED: June 22, 2015

THOMAS VOGELE & ASSOCIATES, APC

12
13 By: /s/ Thomas A. Vogelesee attached
14 authorization)

15 THOMAS A. VOGELE

Attorneys for the Debtor

16 Santa Cruz Berry Farming Company, LLC
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Bodkin, Debra A.

From: Brody, William
Sent: Tuesday, June 23, 2015 9:51 AM
To: Bodkin, Debra A.
Subject: FW: SCBF: Stipulation to Continue Hearing and Motion re Use of Cash Collateral - July 9, 2015 REVISED [IWOV-BN.FID2030004]

From: Effie Anastassiou Esq. [<mailto:effieesq@salinasaglaw.com>]
Sent: Monday, June 22, 2015 6:35 PM
To: Brody, William; tvogele@tvalaw.com
Cc: Katie Brandt; Dania Valdez; Angela Brown (abrown@tvalaw.com); Brendan M. Loper (bloper@tvalaw.com); Shining.Hsu@usdoj.gov; Welch, Joseph M.
Subject: RE: SCBF: Stipulation to Continue Hearing and Motion re Use of Cash Collateral - July 9, 2015 REVISED [IWOV-BN.FID2030004]

You are authorized to electronically sign the stipulation on my behalf.

Thanks

Effie F. Anastassiou, Esq.
EffieEsq@salinasaglaw.com

Anastassiou & Associates



Attorneys at Law

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1 **PROOF OF SERVICE**

2
3 I am employed in the County of Orange, State of California. I am over the age of 18 and
4 not a party to the within action. My business address is at BUCHALTER NEMER, A
5 Professional Corporation, 1000 Wilshire Blvd., Suite 1500, Los Angeles, CA 90017.

6 On the date set forth below, I served the foregoing document described as:

7 **STIPULATION NO. 3 RE CONTINUED HEARING ON DEBTOR-IN-POSSESSION'S**
8 **MOTION FOR ORDER TO SHOW CAUSE RE: TOM LANGE COMPANY, INC.'S**
9 **[ALLEGED] VIOLATION OF THE AUTOMATIC STAY AND TURNOVER OF**
10 **PROPERTY OF THE BANKRUPTCY ESTATE**

11 on all other parties and/or their attorney(s) of record to this action by ☐ faxing and/or
12 ☒ placing a true copy thereof in a sealed envelope as follows:

13 *Debtor*
14 Santa Cruz Berry Farming Company, LLC
15 116 Martinelli Street, Suite 7
Watsonville, CA 95076
SANTA CRUZ-CA

16 **1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF):**

17 Pursuant to controlling General Orders and LBR, the foregoing document will be served by the
18 court via NEF and hyperlink to the document. On (date) June 23, 2015, I checked the CM/ECF
19 docket for this bankruptcy case or adversary proceeding and determined that the following
persons are on the Electronic Mail Notice List to receive NEF transmission at the email
addresses stated below:

20 Effie F. Anastassiou effieesq@salinasaglaw.com, paralegal@salinasaglaw.com
21 William S. Brody wbrody@buchalter.com, dbodkin@buchalter.com
22 Ralph P. Guenther courts@tkdougherty.com, angelal@montereylaw.com
Toriana Holmes tsh@severson.com
23 Office of the U.S. Trustee / SJ USTPRegion17.SJ.ECF@usdoj.gov, ltroxas@hotmail.com
Thomas J. Polis tom@polis-law.com, paralegal@polis-law.com
24 Michael A. Sweet msweet@foxrothschild.com, mflores@foxrothschild.com
Thomas A. Voegel tvogele@tvalaw.com, abrown@tvalaw.com
25 Joseph M. Welch jwelch@buchalter.com, dcyrankowski@buchalter.com

26 **3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE**

27 **TRANSMISSION OR EMAIL** (state method for each person or entity served): Pursuant to
28 F.R.Civ.P. 5 and/or controlling LBR, on (date) June 23, 2015, I served the following persons
and/or entities by personal delivery, overnight mail service, or (for those who consented in
writing to such service method), by facsimile transmission and/or email as follows. Listing the

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1 judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will
2 be completed no later than 24 hours after the document is filed.

3 Honorable M. Elaine Hammond
4 US Bankruptcy Court, Northern (San Jose)
5 United States Courthouse, Room 3035
6 280 South First Street
7 San Jose, CA 95113-3099

8 ☒ I declare under penalty of perjury under the laws of the State of California that the
9 foregoing is true and correct to the best of my knowledge. Executed on June 23, 2015, at Los
10 Angeles, California.

11 ☒ I declare that I am employed in the office of a member of the bar of this court at whose
12 direction the service was made. Executed on June 23, 2015, at Los Angeles, California.

13 _____
14 Debby Bodkin

15 _____
16 /s/ Debby Bodkin